

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 14 Oysters. Proposed Rule-Making.

PROPOSED RULE NUMBER *(leave blank; to be assigned by Secretary of State)*:

BRIEF SUMMARY: This proposed rule-making creates a minimum size (2.5 inches) for American oysters, with a 10% tolerance. An exception is provided for aquaculturists who take or possess undersize oysters from their lease or license sites. The proposed rule also establishes a 10% tolerance for European oysters, which already have a minimum size of 3 inches.

Date, time and location of PUBLIC HEARING *(if any)*: June 25, 2018 2:00 PM DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: July 6, 2018

CONTACT PERSON FOR THIS FILING *(include name, mailing address, telephone, fax, TTY, e-mail)*:

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: §12 MRS §6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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** Check one of the following two boxes.*

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

DEPARTMENT OF MARINE RESOURCES - SHELLFISH HARVESTING

CHAPTER 14 -OYSTERS

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DEPARTMENT OF MARINE RESOURCES

Chapter 14 - Oyster Regulations

14.01 Definitions

- A. "European oyster" means animals of the species *Ostrea edulis*.
- B. "American oyster" means animals of the species *Crassostrea virginica*.

14.10 European Oyster Harvesting Restrictions

A. Closed Season

It shall be unlawful to take, possess, ship, transport, buy or sell European oysters from June 15 to September 15 of any year.

1. Exceptions

Persons holding an aquaculture lease issued pursuant to 12 M.R.S.A. §6072, §6072-A or §6072-B, as provided in §6073-A, and persons holding a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C, may harvest European oysters from an aquaculture site from June 15 to September 15 of any year. Transportation, buying or selling must be done in accordance with Chapters ~~9 and 15-20 and 21-24~~ and 94.

A person shall not be in violation of Chapter 14.10(A) if they are in possession of a bill of lading for the amount of European oysters purchased from June 15 to September 15 of any year showing those oysters were lawfully obtained from an origin outside the State of Maine and possess any applicable license and permit in accordance with Chapter 24.

B. Minimum size

It shall be unlawful to take, possess, ship, transport, buy or sell European oysters whose shells are less than 3 inches in the longest diameter.

1. Tolerance

Any person may possess European oysters that are less than 3 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

~~4-~~ 2. Exceptions

European oysters of smaller size may be taken or possessed by persons holding an aquaculture lease issued pursuant to 12 M.R.S.A. §6072, §6072-A, or §6072-B, as provided by §6073-A, or persons holding a limited-purpose aquaculture (LPA) license issued pursuant to 12 M.R.S.A. §6072-C. Transportation, buying or selling and sanitation requirements must be done in accordance with Chapters ~~9 and 15-20 and 21-24~~ and 94. This exception shall only apply to European oysters cultivated in the leased or licensed areas.

C. Compliance

Persons must comply with Chapters 24 and 94. ~~DMR regulations in Chapters 9 and 15 through 20 established in accordance with the National Shellfish Sanitation Program Model Ordinance (NSSP/MO) for the sanitary control of shellfish, which includes tagging requirements, and with DMR regulations in Chapters 21-24.~~

14.30 American Oyster Harvesting Restrictions

A. Minimum Size

It shall be unlawful to take, possess, ship, transport, buy or sell American oysters whose shells are less than 2.5 inches in the longest diameter.

1. Tolerance

Any person may possess American oysters that are less than 2.5 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

2. Exception

American oysters of smaller size may be taken or possessed by persons holding an aquaculture lease issued pursuant to 12 MRS §6072, §6072-A, or §6072-B, as provided by §6073-A or persons holding a limited purpose aquaculture (LPA) license issued pursuant to 12 MRS §6072-C. Transportation, buying or selling and sanitation requirements must be done in accordance with Chapters 24 and 94. This exception shall only apply to American oysters cultivated in the leased or licensed areas.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 14

STATUTORY AUTHORITY: 12 MRS §6171

DATE AND PLACE OF PUBLIC HEARING:

June 25, 2018 2:00 PM DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: July 6, 2018

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

At their meeting in the fall of 2017, the Shellfish Advisory Council voted unanimously to recommend to the Department to go to rule-making to establish a minimum size of 2.5 inches for wild American oysters, with a 10% tolerance. This will minimize undersize product from being brought to market and provide opportunity for individuals who wish to harvest wild product that is not on lease or license sites.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

Marine Patrol will enforce the new minimum size as they enforce other minimum sizes for shellfish.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

The Shellfish Advisory Council and Marine Patrol were consulted in the development of the rule.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

No fiscal impact is anticipated.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [*see* §8057-A(2)(C)]